

Box Sep

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: MS Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: September 3, 2003

Signature:

(Thomas J. Wrona, Ph.D.)

Docket No.: 27373/33716
(PATENT)**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: Richard J. Whitley, et al.

Application No.: 09/869,674

Filed: June 29, 2001

For: RECOMBINANT HERPES SIMPLEX USEFUL
FOR TREATING NEOPLASTIC DISEASE

Art Unit: Not Yet Assigned

Examiner: Not Yet Assigned

RESPONSE TO NOTIFICATION OF DEFECTIVE RESPONSEMS Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant hereby responds to the Notification of Defective Response mailed August 18, 2003. The Notification required that Applicant 1) pay \$130 surcharge for providing the oath or declaration later than 30 months from the priority date, and 2) provide a copy of the "Sequence Listing" in computer readable form. Applicant respectfully submits that both the surcharge and the computer readable form of the sequence listing were already provided to the Patent Office.

Attached hereto as Exhibit A is a copy of the date-stamped return postcard indicating receipt of the diskette containing the Sequence Listing in computer readable format (CRF) as required under 37 CFR 1.821(e). However, to expedite examination of this application, the Applicant respectfully submits another copy of the Sequence Listing on a Substitute Diskette along with a Statement Under 1.821(e).

With respect to the declaration that was filed on November 15, 2001, attached hereto As Exhibit B is a copy of Applicant's transmittal indicating enclosure of a check in the amount of \$130.00 for the surcharge for submitting the declaration later than 30 months from the priority date. Attached hereto as Exhibit C is a copy of the date-stamped return postcard indicating receipt of the transmittal and check. Therefore, because Applicant has already paid the surcharge, Applicant is not required to pay the \$130.00 surcharge set forth in the Notification of Defective Response.

Nonetheless, the Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 13-2855. A duplicate copy of this paper is enclosed.

Dated: September 3, 2003

Respectfully submitted,

By 

Thomas J. Wrona, Ph.D.

Registration No.: 44,410

MARSHALL, GERSTEIN & BORUN LLP

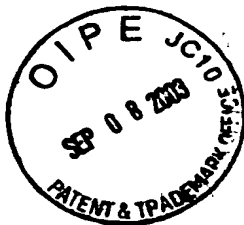
233 S. Wacker Drive, Suite 6300

Sears Tower

Chicago, Illinois 60606-6357

(312) 474-6300

Attorney for Applicant



PATENT
27373/33716

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Whitley, *et al.*

Serial No: 09/869,674

Filed: June 29, 2001


Title: Recombinant Herpes Simplex
Virus Useful for Treating
Neoplastic Disease

Group Art Unit: To be determined

Examiner: To be determined

) I hereby certify that this paper is being
) deposited with the United States Postal
) Service as first class mail, postage prepaid,
) in an envelope addressed to the Mail Stop
) Missing Parts, Commissioner for Patents,
) P.O. Box 1450, Alexandria, Virginia
) 22313-1450.

) September 3, 2003

) 
) Thomas J. Wrona, Ph.D.
) Registration No. 44,410
) Attorney for Applicants

STATEMENT UNDER 37 C.F.R. §1.821(e)

Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

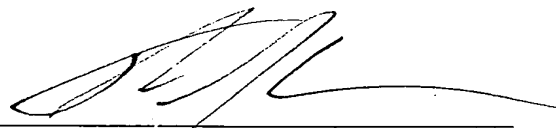
Sir:

I hereby state that the content of the computer readable copy of the Sequence Listing, submitted herewith in accordance with 37 C.F.R. §§1.821-1.825, is an exact copy of the disk previously submitted on June 29, 2001, is the same as the paper copy submitted on June 29, 2001, and includes no new matter.

Respectfully submitted,

MARSHALL, GERSTEIN & BORUN LLP
6300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6357
(312) 474-6300

By:


Thomas J. Wrona, Ph.D.
Registration No. 44,410
Attorney for Applicants

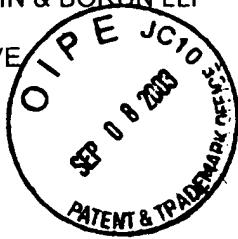


UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

U.S. APPLICATION NUMBER NO. 09/869,674	FIRST NAMED APPLICANT Whitley	ATTY. DOCKET NO. 27373/33716
---	----------------------------------	---------------------------------

04743
MARSHALL, GERSTEIN & BORUN LLP
6300 SEARS TOWER
233 S. WACKER DRIVE
CHICAGO, IL 60606



RECEIVED

AUG 25 2003

MARSHALL GERSTEIN

INTERNATIONAL APPLICATION NO.

PCT/US98/27902

I.A. FILING DATE

PRIORITY DATE

12/31/1998

CONFIRMATION NO. 8665

371 FORMALITIES LETTER



OC000000010708961

Date Mailed: 08/18/2003

NOTIFICATION OF DEFECTIVE RESPONSE

The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as an Elected Office (37 CFR 1.495):

- Copy of the International Application filed on 06/29/2001
- Copy of the International Search Report filed on 06/29/2001
- Information Disclosure Statements filed on 12/11/2001
- Oath or Declaration filed on 11/15/2001
- Biochemical Sequence Listing filed on 06/29/2001
- Copy of references cited in ISR filed on 11/15/2001
- U.S. Basic National Fees filed on 06/29/2001

Docketed: 9-18-03

Applicant's response filed 12/11/2001 is hereby acknowledged. The following requirements set forth in the NOTIFICATION of MISSING REQUIREMENTS mailed 12/11/2001 have not been completed.

The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

- \$130 Surcharge for providing the oath or declaration later than 30 months from the priority date (37 CFR 1.492(e)) has not been paid in full.

Applicant is required to complete the response within a time limit of ONE MONTH from the date of this Notification or within the time remaining in the response set forth in the Notification of Missing Requirements, whichever is the longer. No extension of this time limit may be granted under 37 CFR 1.136, but the period for response set in the Notification of Missing Requirements may be extended under 37 CFR 1.136(a).

SUMMARY OF FEES DUE:

Total additional fees required for this application is \$130 for a Large Entity:

- \$130 Late oath or declaration Surcharge.

The following items **MUST** be furnished within the period set forth below:

- The nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements for such a disclosure as set forth in 37 CFR 1.821-1.825 for the following reason(s):
 - A copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 CFR 1.821(e) and PCT Rule 13ter.1(a)(ii).
 - **APPLICANT MUST PROVIDE:**
 - An initial or substitute computer readable form (CRF) of the "Sequence Listing."
- For questions regarding compliance to 37 CFR 1.821-1.825 requirements, please contact:
 - For Rules Interpretation, call (703) 308-4216
 - To Purchase PatentIn Software, call (703) 306-2600
 - For PatentIn Software Program Help, call (703) 306-4119 or e-mail at patin21help@uspto.gov or patin3help@uspto.gov

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

*A copy of this notice **MUST** be returned with the response.*

PATRICIA A BOOKER

Telephone: (703) 305-3738

PART 1 - ATTORNEY/APPLICANT COPY

U.S. APPLICATION NUMBER NO.	INTERNATIONAL APPLICATION NO.	ATTY. DOCKET NO.
09/869,674	PCT/US98/27902	27373/33716

27373/33716

06/29/01

The Patent Office is hereby requested to acknowledge receipt

of the following papers by stamping and returning this card.

WITH SERIAL NO. AND FILING DATE

Whitley et al.

"Recombinant Herpes Simplex Useful for Treating Neoplastic Disease"

Transmittal Letter to The United States Designated/Elected Office Concerning a Filing Under 35 U.S.C. 371

Fee \$ 1,066.00 Check No. 125364

Diskette

w/certificate of mailing by U.s.P.S. Express Mail dated June 29, 2001 w/label no.: EK657823500US

09/859674

RECEIVED 09/08/01

EK657815070US

PATENT

Attorney Docket No. 27373/33716

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of:
Whitley *et al.*

U.S. Appl. No. 09/869,674

International Application No.:
PCT/US98/27902

Filed: June 29, 2001

or: RECOMBINANT HERPES
SIMPLEX VIRUS USEFUL
FOR TREATING
NEOPLASTIC DISEASE

Group Art Unit: Not yet assigned

Examiner: Not yet assigned

"EXPRESS MAIL"

mailing label No. EK657815070US

Date of Deposit: November 15, 2001

I hereby certify that this paper (or fee) is
being deposited with the United States
Postal Service "EXPRESS MAIL POST
OFFICE TO ADDRESSEE" service under
37 CFR §1.10 on the date indicated above
and is addressed to: Commissioner for
Patents, Box PCT, Washington, D.C. 20231

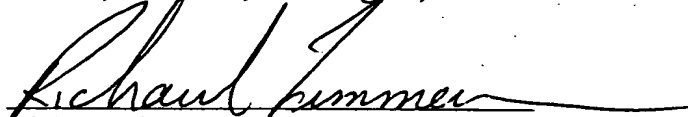

Richard Zimmermann

EXHIBIT B

**TRANSMITTAL OF EXECUTED INVENTORS' DECLARATIONS
TO THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)**

Commissioner for Patents
Box PCT
Washington, D.C. 20231

Sir:

Enclosed herewith are the executed inventors' declarations. Also enclosed herewith is
(the patent processing fee (\$130) pursuant to 37 C.F.R. §1.492(e), in view of the later filing of
said declarations.

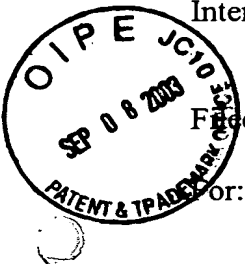
Respectfully submitted,

MARSHALL, GERSTEIN, & BORUN



Thomas A. Cawley, Jr., Ph.D.
Registration No. 40,944
6300 Sears Tower
233 South Wacker Drive
Chicago, IL 60606-6402
312-474-6300

November 15, 2001





POST OFFICE TO ADDRESSEE

EK657815070US

ORIGIN (POSTAL USE ONLY)

PO ZIP Code 111501	Day of Delivery <input type="checkbox"/> Next <input type="checkbox"/> Second	Flat Rate Envelope <input type="checkbox"/>
Date In Mo. Day Year 11 15 01	<input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM	Postage \$ 12.40
Time In <input type="checkbox"/> AM <input type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee
Weight lbs. ozs.	Int'l Alpha Country Code	COD Fee Insurance Fee
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials	Total Postage & Fees \$ 12.40

EXHIBIT C

SEE REVERSE SIDE FOR
SERVICE GUARANTEE AND
INSURANCE COVERAGE LIMITS

Customer Copy

CUSTOMER USE ONLY

METHOD OF PAYMENT: Express Mail Corporate Acct. No. Federal Agency Acct. No. or Postal Service Acct. No.	<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent. (If delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery. NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday Customer Signature
---	---

FROM: (PLEASE PRINT)

PHONE ()

MARSHALL, GERSTEIN & BORUN
6300 Sears Tower
233 S. Wacker Drive
Chicago, IL 60606

27373/33716

TO: (PLEASE PRINT)

PHONE ()

Commissioner for Patents
BOX PCT
Washington, D.C. 20231

FOR PICKUP OR TRACKING CALL 1-800-222-1811

www.usps.com



Label 11-B September 1999

27373/33716

111501

The Patent Office is hereby requested to acknowledge receipt
of the following papers by stamping and returning this card.

Whitley et al.

09/869,674

Transmittal of Executed Inventors' Declaration w/
\$130.00 (ck# 68310)

w/certificate of mailing by U.S.P.S. Express Mail dated
November 15, 2001 w/label no. EK657815070US

JCS Rec'd PCT/PTO 15 NOV 2001